

## **REMARKS/ARGUMENTS**

### **I. General Remarks**

Please consider the application in view of the following remarks. Applicants thank the Examiner for his careful consideration of this application.

### **II. Disposition of the Claims**

Claims 1-88 are pending in this application. Claims 42-62 and 67-88 have been canceled in response to a restriction requirement. Claims 1-41 and 63-66 are rejected.

### **III. Remarks Regarding Restriction Requirement**

During a telephone conference with the Examiner on June 1, 2006, Applicants made a provisional election with traverse to prosecute the invention of Group I, claims 1-41 and Claims 63-66. Affirmation of this election is hereby made. Accordingly, Applicants have canceled claims 42-62 and 67-88 herein. Applicants reserve the right to pursue these claims as filed in a divisional or other continuing application.

### **IV. Remarks Regarding Objections to the Specification**

The Examiner has noted Applicants' use of the trademarks ACCOLADE™, PETROFREE®, ALCOSPERSE® 747 and ALCOQUEST® 747 in the specification and has stated that "a trademark must be accompanied by their generic terminology." (Office Action at 4.) Applicants respectfully disagree and respectfully submit that Applicants' statements in the specification include generic terminology for the aforementioned trademarks.

With respect to ACCOLADE™, PETROFREE®, PETROFREE® LV, and PETROFREE® S.F., the specification states that "[e]xamples of suitable oleaginous fluids include those commercially available from Halliburton Energy Services, Inc., in Duncan, Oklahoma, under the tradenames "ACCOLADE™," "PETROFREE®," "PETROFREE® LV," and "PETROFREE® S.F." (See Present Application at 7.) With respect to ALCOSPERSE® 747 and ALCOQUEST® 747, the specification states that "[e]xamples of suitable commercially available polymers includes ALCOSPERSE® 747 and ALCOQUEST® 747 available from Alco-Chemical, a group of Imperial Chemical Industries PLC, in Chattanooga, Tennessee." (See Present Application at 10.) Thus, the trademarks are accompanied by appropriate generic terminology.

Furthermore, Applicants respectfully submit that The Manual of Patent Examining Procedure (hereinafter "MPEP") explicitly states that "it is important to recognize that a trademark or trade name is used to identify a source of goods, and not the goods

themselves. Thus a trademark or trade name does not identify or describe the goods associated with the trademark or trade name.” MPEP § 2173.05 (u). As Applicants are using the aforementioned trademarks in the specification to identify a source of goods and such trademarks do not appear in the claim language, the generic terminology provided in the original specification is sufficient to satisfy the requirements under MPEP § 608.01(v). Therefore, Applicants respectfully request the withdrawal of this objection.

**V. Remarks Regarding Rejections Under the Doctrine of Double Patenting.**

Claims 1-13, 22-29, 33, 36-41 and 63-66 are provisionally rejected on the ground of nonstatutory double patenting over claims 1-13, 18, 20-27, 31-37 and 57-61 of copending Application No. 10/829,484 (hereinafter “the ‘484 Application”). Submitted herewith is an appropriate terminal disclaimer in compliance with 37 C.F.R. § 1.321 disclaiming the appropriate term. Accordingly, Applicants respectfully submit that the double patenting rejections have been overcome, and respectfully request the withdrawal of these rejections.

**VI. Remarks Regarding Rejections under 35 U.S.C. §102**

Claims 1-9, 11-17, 19-21, 23-34, 36-41, 63 and 65-66 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,990,050 to Patel (hereinafter “*Patel*”). With respect to this rejection, the Office Action states that:

Patel discloses the drilling fluid to further contain wetting agents or emulsifiers, such as crude tall oil, oxidized crude tall oil, alkyl aromatic sulfates and sulfonates; organophilic clay; an oil soluble polymer or a polyamide resin as a viscosifier; weighting agents; fluid loss control agents; and corrosion inhibitors, such as silicates. (Col. 5, lines 1-15 and 22-63) Patel lists a series of emulsifiers (e.g. VERSACOAT®) followed by an alternate, separate list of surfactants, which can be instead used to produce or stabilize the invert-emulsion. Thus, Patel does not require that the invert-emulsion contain a surfactant. (Col. 5, lines 15-22; See, e.g., Example 1, wherein Patel discloses an example of the emulsion containing a glycol ether, organophilic clay, VERSACOAT® emulsifier, a silicone emulsifier, lime, barite, and a calcium chloride brine)

(Office Action at 7.) Applicants respectfully disagree because *Patel* does not disclose every element of claims 1-9, 11-17, 19-21, 23-34, 36-41, 63 and 65-66 as required to anticipate these claims under 35 U.S.C. § 102(b). See MPEP § 2131.

In particular, *Patel* does not disclose “a surfactant free emulsion,” as recited in independent claims 1, 29, and 63. As mentioned in the Office Action, in Example 1, “*Patel* discloses an example of the emulsion containing a glycol ether, organophilic clay, VERSACOAT® emulsifier, a silicone emulsifier, lime, barite, and a calcium chloride brine.” (Office Action at 7.) However, VERSACOAT® is an organic surfactant which serves as an emulsifier and wetting agent. (See Product Bulletin for VERSACOAT®, *available* at [http://www.miswaco.com/More\\_Info/Products\\_and\\_Services/Fluids/Drilling\\_Products/DrillingProductsDocuments/VERSACOAT/VERSACOAT%20-%20Product%20Bulletin.pdf](http://www.miswaco.com/More_Info/Products_and_Services/Fluids/Drilling_Products/DrillingProductsDocuments/VERSACOAT/VERSACOAT%20-%20Product%20Bulletin.pdf), a copy of which is attached herewith). Furthermore, all of the examples in *Patel* pertaining to the preparation of invert-drilling fluids teaches the use of VERSACOAT® in such fluids. Thus *Patel* does not disclose a surfactant-free emulsion, as recited in independent claims 1, 29, 63.

Therefore, Applicants respectfully assert that independent claims 1, 29, and 63 are not anticipated by *Patel*. Accordingly, Applicants respectfully request withdrawal of the 35 U.S.C. § 102(b) rejections as to independent claim 1, 29, and 63 and its dependents, claims 2-9, 11-17, 19-21, 23-28, 30-34, 36-41, and 65-66.

## **VII. Remarks Regarding Rejections under 35 U.S.C. §103**

### **A. Claims 18, 22, and 35 Are Not Obviated by *Patel* in view of *Perrin*.**

Claims 18, 22 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Patel* in view of “Amphiphilic Copolymers”, Langmuir 1998, 14, 5977-79 (hereinafter “*Perrin*”). Applicants respectfully disagree. As discussed above in Section VI, *Patel* does not teach each and every limitation of independent claims 1 and 29, from which claims 18, 22, and 35 depend. Nor can *Perrin* be used to provide the missing limitations. Accordingly, Applicants respectfully request withdrawal of this rejection with respect to claims 18, 22 and 35.

### **B. Claims 10 and 64 Are Not Obviated by *Patel* in view of *Kokal*.**

Claims 10 and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Patel* in view of “Crude Oil Emulsions: A State of the Art Review”, SPE 77497 (hereinafter “*Kokal*”). Applicants respectfully disagree. As discussed above in Section VI, *Patel* does not teach each and every limitation of independent claims 1 and 63, from which claims 10 and 64 depend. Nor can *Kokal* be used to provide the missing limitations. Accordingly, Applicants respectfully request withdrawal of this rejection with respect to claims 10 and 64.

### VIII. No Waiver

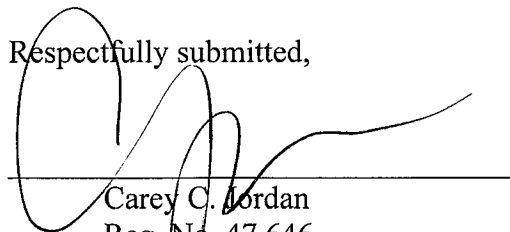
All of Applicants' arguments are without prejudice or disclaimer. Additionally, Applicants have merely discussed example distinctions from the cited references. Other distinctions may exist, and Applicants reserve the right to discuss these additional distinctions in a later Response or on Appeal, if appropriate. By not responding to additional statements made by the Examiner, Applicants do not acquiesce to the Examiner's additional statements, such as, for example, any statements relating to what would be obvious to a person of ordinary skill in the art. The example distinctions discussed by Applicants is sufficient to overcome the double patenting, anticipation, and obviousness rejections.

### SUMMARY

In light of the above remarks, Applicants respectfully request reconsideration and withdrawal of the outstanding rejections and objections. Applicants further submit that the application is now in condition for allowance, and earnestly solicit timely notice of the same. Should the Examiner have any questions, comments or suggestions in furtherance of the prosecution of this application, the Examiner is invited to contact the attorney of record by telephone, facsimile, or electronic mail.

The Commissioner has been authorized to debit the Deposit Account of Baker Botts L.L.P. Deposit, No. 02-0383, Order Number 063718.0454 in the amount of \$130.00 for the terminal disclaimer fee under 37 C.F.R. § 1.20(d). Should the Commissioner deem that any additional fees are due, including any fees for extensions of time, the Commissioner is authorized to debit Baker Botts L.L.P. Deposit Account No. 02-0383, Order Number 063718.0454, for any underpayment of fees that may be due in association with this filing.

Respectfully submitted,



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Date: September 6, 2006